

AMENDED IN SENATE MARCH 18, 2024

SENATE BILL

No. 1143

Introduced by Senator Allen

February 14, 2024

An act to add Chapter 1.5 (commencing with Section 47725) to Part 7 of Division 30 of the Public Resources Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 1143, as amended, Allen. Household hazardous waste: producer responsibility.

~~(1) The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and Recovery (CalRecycle), requires a city and a county to prepare and submit to the department a countywide integrated waste management plan. The act requires the plan to include a household hazardous waste element that identifies a program in each city and county for the safe collection, recycling, treatment, and disposal of hazardous wastes that are generated by households. The act authorizes a city or county to form a regional agency with another city or county for purposes of complying with these requirements.~~

~~Under~~

(1) Under existing law, as part of the hazardous waste control laws, the Department of Toxic Substances Control (DTSC) generally regulates the management and handling of hazardous waste and hazardous materials. Existing law authorizes a public agency, as defined, to operate a household hazardous waste collection facility under permit from DTSC.

The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and Recovery, requires a city and a county to prepare and submit to the department a countywide integrated waste management plan. The act requires the plan to include a household hazardous waste element that identifies a program in each city and county for the safe collection, recycling, treatment, and disposal of hazardous wastes that are generated by households.

Existing law, the Plastic Pollution Prevention and Packaging Producer Responsibility Act, establishes a producer responsibility program designed to ensure that producers of single-use packaging and food service ware covered by that program take responsibility for the costs associated with the end-of-life management of that material and ensure that the material is recyclable or compostable.

This bill would create a producer responsibility program for products containing household hazardous waste and require a producer responsibility organization (PRO) to provide a free and convenient collection and management system for covered products. The bill would define “covered product” to mean a product ~~containing household hazardous waste, except a product that is subject to another statewide extended producer responsibility program and pesticides, as specified: that is flammable, toxic, ignitable, corrosive, reactive, or pressurized, and that meets other specified criteria.~~ The bill would require a producer of a covered product to register with a PRO, which would be required to develop and implement a producer responsibility plan for the collection, transportation, and the safe and proper management of covered products. The bill would require ~~CalRecycle~~ DTSC to adopt regulations to implement the program with an effective date no earlier than July 1, ~~2026; 2027.~~

The bill would require a PRO, within 12 months of the effective date of the regulations, to submit a product responsibility plan to ~~CalRecycle~~ DTSC. The bill would require the plan to include specified elements, including a funding mechanism that provides sufficient funding to carry out the plan. The bill would require, within 6 months of receipt of the plan, ~~CalRecycle~~ DTSC to approve, approve in part, or disapprove the plan. The bill would require ~~CalRecycle~~ DTSC to notify the PRO of its decision. If ~~CalRecycle~~ DTSC does not approve the plan in full, then the bill would require ~~CalRecycle~~ DTSC to specify the reasons for disapproval or identify the portions of the partially approved plan that do not comply with the program, as applicable. The bill would require

a PRO to submit a revised plan if its plan is not fully approved. The bill would require ~~CalRecycle~~ DTSC to conditionally approve a plan if ~~CalRecycle~~ DTSC does not approve, approve in part, or disapprove a plan within one year of receipt of the plan.

The bill would require a PRO to implement its plan within 90 days of approval. The bill would require the plan to be fully funded in a manner that equitably distributes the plan's costs among participant producers that reflects sales volumes and the cost to manage the covered products that a producer produces. The bill would require the PRO to reimburse local jurisdictions for costs associated with providing a convenient collection system for covered products if the PRO's plan relies on local jurisdictions to collect or manage covered products.

The bill would require the PRO to prepare and submit to ~~CalRecycle~~ DTSC an annual report describing the activities carried out pursuant to the plan. The bill would require the PRO to retain specified documents, annually audit its accounting books, and make documents available to ~~CalRecycle~~ DTSC for review, as specified. The bill would require all reports and records provided to ~~CalRecycle~~ DTSC pursuant to the program to be provided under the penalty of perjury. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The bill would require a participant producer, through the PRO, to pay ~~CalRecycle~~, DTSC, on an unspecified schedule, an annual administrative charge, as determined by ~~CalRecycle~~, DTSC. The bill would require the charge be set at an amount that is adequate to cover ~~CalRecycle's~~ DTSC's full costs of administering and enforcing the program. The bill would provide for the imposition of administrative civil penalties on producers and other specified persons who violate the program. The bill would establish the Household Hazardous Waste Producer Responsibility Fund in the State Treasury and would require the administrative charges collected by ~~CalRecycle~~ DTSC to be deposited into that fund for expenditure by ~~CalRecycle~~, DTSC, upon appropriation by the Legislature, to cover ~~CalRecycle's~~ DTSC's cost to implement the program. The bill would also establish the Household Hazardous Products Penalty Account in the Household Hazardous Waste Producer Responsibility Fund and would require that the civil penalties collected by ~~CalRecycle~~ DTSC pursuant to the program be deposited into that account, for expenditure by ~~CalRecycle~~, DTSC, upon appropriation by the Legislature, for activities related to the collection, reuse, and recycling of covered products, grants for related purposes, and the administration and enforcement of the program.

The bill would provide that certain actions of a PRO or a producer are not violations of the Cartwright Act or certain provisions regulating unfair business practices or unfair competition.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all the
- 2 following:
- 3 (a) Thousands of household products that are sold in the state
- 4 contain substances designated as hazardous under state or federal
- 5 law.
- 6 (b) Leftover household products, known as household hazardous
- 7 waste, are regulated through a requirement that municipal solid
- 8 waste management entities include provisions in solid waste
- 9 implementation plans for the management and diversion of
- 10 unregulated hazardous waste.
- 11 (c) California’s hazardous waste laws and regulations establish
- 12 specific requirements for the management of hazardous waste,
- 13 including a prohibition on disposal in landfills.
- 14 (d) The Department of Resources Recycling and Recovery has
- 15 supported the construction of household hazardous waste facilities
- 16 and management by offering household hazardous waste grants
- 17 to local governments, and those grants are currently limited to
- 18 \$5,000,000 per year when a single facility, such as the one in
- 19 progress in the County of Sonoma, will cost between \$13,000,000
- 20 and \$16,000,000.

1 (e) California already has extended producer responsibility
2 programs for some household hazardous waste products, including
3 mercury thermostats, pharmaceuticals, sharps and needles, and
4 paint. These programs cover almost half the total costs of
5 household hazardous waste. At the recommendation of the
6 Statewide Commission on Recycling Markets and Curbside
7 Recycling, the Legislature added a program for aerosol paint cans
8 in 2023.

9 (f) The Statewide Commission on Recycling Markets and
10 Curbside Recycling convened from July 2020 to June 2022 and
11 its first recommendation was to create a household hazardous waste
12 extended producer responsibility program.

13 (g) According to the Department of Toxic Substances Control’s
14 Hazardous Waste Management Report, released November 2023,
15 “The previous waste reduction efforts were discontinued because
16 they did not produce reductions large enough to be seen as
17 effective.”

18 (h) The cost of managing household hazardous waste for local
19 government ratepayers is extremely high and yet proper disposal
20 is still inconvenient for the public. Extended producer responsibility
21 is used for a wide variety of household hazardous waste products
22 in Canada and other countries for products like antifreeze,
23 pesticides, flammables, radioactive smoke alarms, lighting, and
24 others.

25 (i) To improve diversion of household hazardous waste from
26 landfills, reduce the financial burden on local jurisdictions and
27 taxpayers, reduce the cost of the overall system of managing
28 household hazardous waste, improve the convenience to the public,
29 and lessen the environmental and public health risks posed by
30 improperly disposed household hazardous waste, the state shall
31 implement a program to require the manufacturers of household
32 hazardous waste products to implement a producer responsibility
33 organization to improve collection and diversion and to cover the
34 costs of managing household products containing a hazardous
35 substance.

36 SEC. 2. Chapter 1.5 (commencing with Section 47725) is added
37 to Part 7 of Division 30 of the Public Resources Code, to read:

1 CHAPTER 1.5. HOUSEHOLD HAZARDOUS WASTE PRODUCER
2 RESPONSIBILITY ACT OF 2024

3
4 Article 1. General Provisions and Definitions

5
6 47725. (a) This chapter shall be known, and may be cited, as
7 the Household Hazardous Waste Producer Responsibility Act of
8 2024.

9 (b) The purpose of this chapter is to provide for the safe and
10 proper management of household hazardous waste, which poses
11 a threat to public health and safety, is costly for California's local
12 governments, and may cause significant damage to the environment
13 when managed improperly.

14 47726. (a) Except as provided in Section 47740, the department
15 shall adopt, amend, or repeal, in accordance with the
16 Administrative Procedure Act (Chapter 3.5 (commencing with
17 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
18 Code), regulations to implement this chapter. The department shall
19 not adopt regulations pursuant to this section with an effective date
20 earlier than July 1, ~~2026~~, 2027.

21 (b) On or before July 1, ~~2025~~, the department, in consultation
22 with the Department of Toxic Substances Control, *January 1,*
23 *2026*, the department shall establish and post on its internet website
24 a list of covered products.

25 (c) On or before January 1, ~~2026~~, 2027, the department shall
26 approve a PRO that meets the requirements of this chapter.

27 47727. For purposes of this chapter, the following definitions
28 apply:

29 (a) (1) "Approved plan" means a producer responsibility plan
30 that has been approved by the department pursuant to Section
31 47740 and that has not been revoked by the department pursuant
32 to Section 47757.

33 (2) A conditionally approved plan is an approved plan, except
34 as used in Section 47740.

35 (3) A partially approved plan is not an approved plan.

36 (b) "Brand" means a name, symbol, word, or mark that identifies
37 a covered product rather than its components, and attributes the
38 covered product to the owner or licensee of the brand as the
39 producer.

1 (c) “Consumer” means a purchaser, owner, or lessee of a covered
2 product, including a person, business, corporation, limited
3 partnership, nonprofit organization, or governmental entity.

4 (d) “Contact information” means a name, physical address,
5 mailing address, email address, and phone number.

6 ~~(e) (1) “Covered product” means any product containing
7 household hazardous waste, as defined in Section 25218.1 of the
8 Health and Safety Code, and any product defined by the
9 Department of Toxic Substances Control in regulations as, or
10 containing, household hazardous waste.~~

11 ~~(2) “Covered product” does not include either of the following:~~

12 ~~(e) “Covered product” means a product that meets all the
13 following requirements:~~

14 ~~(1) Is flammable, toxic, ignitable, corrosive, reactive, or
15 pressurized.~~

16 ~~(2) Is one or more of the following:~~

17 ~~(A) Aerosols, cleaners, glues, solvents, oxidizers, and adhesives.~~

18 ~~(B) Automotive products.~~

19 ~~(C) Electronics and paint products not covered under existing
20 statutorily required programs.~~

21 ~~(D) Fire extinguishers with up to 50 pounds of water capacity.~~

22 ~~(E) Degreasers, lubricants, liquid adhesives, and strippers.~~

23 ~~(F) Gas cylinders, including nonrefillable helium, oxygen, and
24 flammable cylinders with up to 50 pounds of water capacity,
25 propane cylinders with up to one pound, and spray foam insulation
26 tanks.~~

27 ~~(G) Lamp kerosene and lighter fluid.~~

28 ~~(H) Rust, tar, and bug remover.~~

29 ~~(I) Fertilizers, pesticides, insecticides, herbicides, fungicides,
30 and soil fumigants.~~

31 ~~(J) Products containing asbestos, mercury, or polychlorinated
32 biphenyls.~~

33 ~~(K) Pool chemicals and photochemicals.~~

34 ~~(L) Concrete mix containing corrosive lime.~~

35 ~~(M) Universal waste.~~

36 ~~(3) Satisfies either of the following criteria:~~

37 ~~(A) Meets the criteria for household hazardous waste, as defined
38 in Section 25218.1 of the Health and Safety Code, at the time of
39 disposal.~~

1 (B) *Is defined by the department in regulations as household*
2 *hazardous waste.*

3 (4) *Is neither of the following:*

4 (A) A product that is subject to another statewide extended
5 producer responsibility program pursuant to state law.

6 ~~(B) Pesticides required to be registered with the Department of~~
7 ~~Pesticide Regulation.~~

8 (B) *Health and beauty products.*

9 (f) “Department” means the Department of Resources Recycling
10 and Recovery. *Toxic Substances Control.*

11 (g) “Importer” means either of the following:

12 (1) A person qualifying as an importer of record for purposes
13 of Section 1484(a)(2)(B) of Title 19 of the United States Code
14 with regard to the import of a covered product that is sold,
15 distributed for sale, or offered for sale in or into the state that was
16 manufactured or assembled by a company outside of the United
17 States.

18 (2) A person importing into the state for sale, distributing for
19 sale, or offering for sale in the state a covered product that was
20 manufactured or assembled by a company physically located
21 outside of the state.

22 (h) “Participant producer” means a producer that is registered
23 with the PRO.

24 (i) (1) “Producer” means a person who manufactures a covered
25 product and who sells, offers for sale, or distributes a covered
26 product into the state under the person’s own name or brand.

27 (2) If there is no person in the state who is the producer for
28 purposes of paragraph (1), the producer of the covered product is
29 the owner or licensee of a brand under which the covered product
30 is sold or distributed into the state. For purposes of this subdivision,
31 an exclusive licensee is a person holding the exclusive right to use
32 a brand in the state in connection with the manufacture, sale, or
33 distribution for sale in or into the state of the covered product.

34 (3) If there is no person in the state who is the producer for
35 purposes of paragraph (1) or (2), the producer of the covered
36 product is the person that imports the covered product into the
37 state for sale, distribution, or installation.

38 (4) If there is no person in the state who is the producer for
39 purpose of paragraph (1), (2), or (3), the producer of the covered

1 product is the distributor, retailer, dealer, or wholesaler who sells
2 the product in or into the state.

3 (5) For purposes of this chapter, the sale of a covered product
4 shall be deemed to occur in the state if the covered product is
5 delivered to the consumer in the state.

6 (j) “Producer responsibility organization” or “PRO” means an
7 organization that is exempt from taxation under Section 501(c)(3)
8 of the federal Internal Revenue Code of 1986 that is appointed by
9 one or more producers to act as an agent on behalf of the producers
10 to design, submit, and administer a producer responsibility
11 organization pursuant to this chapter.

12 (k) “Producer responsibility plan” or “plan” means the plan
13 developed by a PRO for the collection, transportation, and the safe
14 and proper management of covered products pursuant to Article
15 4 (commencing with Section 47740) and submitted to the
16 department for approval pursuant to Section 47740.

17 (l) “Sell” or “sales” means a transfer of title of a covered product
18 for consideration, including a remote sale conducted through a
19 sales outlet, catalog, internet website, online marketplace, or similar
20 electronic means. For purposes of this chapter, “sell” or “sales”
21 includes a lease through which a covered product is provided to a
22 consumer by a manufacturer, wholesaler, or retailer.

23

24

Article 2. Producers

25

26 47730. (a) No later than 90 days after the department’s
27 approval of the PRO, pursuant to subdivision (c) of Section 47726,
28 a producer shall register with the PRO.

29 (b) No later than 30 days after the effective date of the
30 regulations described in subdivision (a) of Section 47726, a
31 producer shall notify the department electronically that the producer
32 has registered with the PRO.

33 (c) A producer shall register with the PRO in accordance with
34 the procedures and requirements established by the PRO.

35 (d) Upon approval of a plan pursuant to Section 47740, a
36 producer shall not sell, offer for sale, import, or distribute a covered
37 product in the state unless all the following are met:

38 (1) The producer is registered with the PRO.

39 (2) The covered product is accounted for in the plan.

40 (3) The department has approved the plan.

1 (e) If an entity does not meet the definition of a producer and
2 is not subject to this chapter but, at any point, meets the definition
3 of a producer, that entity shall be deemed a producer at that point
4 and shall register with the PRO and otherwise comply with the
5 requirements of this chapter before beginning to sell, offer for sale,
6 import, or distribute covered products in the state.

7 47731. (a) No later than 180 days after the effective date of
8 the regulations described in Section 47726, a producer shall provide
9 to the department, in a form and manner established by the
10 department, both of the following:

- 11 (1) The producer’s contact information.
- 12 (2) A list of covered products and brands of covered products
13 that the producer sells, distributes for sale, imports for sale, or
14 offers for sale in or into the state.

15 (b) A producer shall provide to the department updates to the
16 information described in subdivision (a) on or before January 15
17 of each year, within 30 days of changes to the contact information
18 or list, and upon the department’s request.

19

20 Article 3. Producer Responsibility Organizations

21

22 47735. A PRO shall have a governing board consisting of
23 participant producers that represent the diversity of covered
24 products.

25 47736. If the department determines that the PRO no longer
26 meets the requirements of this chapter or fails to implement or
27 administer an approved plan in a manner that effectuates the
28 purposes of this chapter, the department may revoke its approval
29 of the plan and may approve a plan submitted by another PRO.

30 47737. A PRO shall notify the department within 30 calendar
31 days of any the following:

32 (a) The end of a three-month period during which the PRO
33 unsuccessfully attempted to obtain a fee, records, or information
34 from a participant producer.

35 (b) The date that a producer no longer participates in the PRO’s
36 approved plan.

37 (c) Any instance of noncompliance by a participant producer.

38 47738. Within 24 months of the effective date of the regulations
39 described in Section 47726, a PRO with an approved plan shall

1 provide a free and convenient collection and management system
2 for covered products.

3

4

Article 4. Producer Responsibility Plans

5

6 47740. (a) Within 12 months of the effective date of the
7 regulations described in ~~subdivision (a)~~ of Section 47726, a PRO
8 shall develop and submit a proposed plan to the department, in a
9 form and manner determined by the department.

10 (b) Within six months of receipt of a proposed plan, the
11 department shall approve, approve in part, or disapprove the plan.

12 (c) If the department approves a proposed plan, a revised plan,
13 or a conditionally approved plan, then the department shall notify
14 the PRO of the approval. The PRO shall implement the approved
15 plan within 90 days of receipt of the notice of approval, or as
16 otherwise agreed to by the department.

17 (d) If the department disapproves a proposed plan or a revised
18 plan, then the department shall notify the PRO of the disapproval
19 and specify the reasons for disapproval. Within 30 days of receipt
20 of notice of disapproval, the PRO shall submit a revised plan.

21 (e) (1) If the department approves a proposed plan or a revised
22 plan in part, then the department shall notify the PRO of the partial
23 approval and identify the portions of the plan that do not comply
24 with this chapter.

25 (2) Within 30 days of receipt of the notice of partial approval,
26 the PRO shall submit a revised plan to the department.

27 (3) The PRO shall implement the approved parts of the plan
28 within 90 days of receipt of the notice of partial approval, or as
29 otherwise agreed to by the department.

30 (f) Within 30 days of receipt of a revised plan, the department
31 shall approve, approve in part, or disapprove the revised plan.

32 (g) If the department has not approved, approved in part, or
33 disapproved a plan within one year of receipt of the plan, then the
34 plan shall be deemed conditionally approved and the department
35 shall notify the PRO of the conditional approval.

36 (h) The department may impose additional requirements for
37 any portion of a proposed plan, a revised plan, or a conditionally
38 approved plan that does not comply with this chapter and that has
39 not been approved.

1 (i) When reviewing a proposed plan, revised plan, or a
2 conditionally approved plan, the department may solicit
3 information from producers, other agencies or departments, or
4 stakeholders as the department deems appropriate.

5 (j) The department may review an approved plan or a
6 conditionally approved plan at any time. If the department finds
7 that an approved plan or a conditionally approved plan is deficient,
8 then it may recommend modifications.

9 (k) Any substantial changes to an approved plan shall be
10 submitted to the department for approval.

11 (l) (1) An approved plan and a conditionally approved plan
12 shall be a public record, except that financial, production, or sales
13 data reported by the PRO to the department is not a public record
14 for purposes of the California Public Records Act (Division 10
15 (commencing with Section 7920.000) of Title 1 of the Government
16 Code) and shall not be open to public inspection. The department
17 may release financial or sales data in summary form only so the
18 information cannot be attributable to a specific entity.

19 (2) A PRO may submit to the department a redacted version of
20 the approved plan or conditionally approved plan that removes
21 any proprietary or confidential information.

22 (3) Within 90 days of approval, conditional approval, or revision
23 of a plan, the department shall post on its internet website the plan
24 and a list of all the participant producers covered by the plan.

25 (m) Within 24 months of the effective date of the regulations
26 described in Section 47726, a PRO shall have a plan approved or
27 conditionally approved by the department, and each producer shall
28 be subject to an approved plan or conditionally approved plan.

29 47741. A plan shall do all of the following:

30 (a) Be designed to ensure the safe and convenient collection
31 and management of covered products.

32 (b) Include the contact information of each participant producer
33 that is covered by the plan.

34 (c) Include a financial section that demonstrates how the PRO
35 will comply with Section 47745, including, but not limited to, a
36 five-year budget that demonstrates how the PRO will comply with
37 subdivision (b) of Section 47745.

38 (d) Include a section describing the PRO's contingency plan in
39 the event the plan expires or is revoked. The contingency plan
40 shall guarantee that all the contracts, financial data, and any other

1 necessary authority and assets to operate the program shall vest in
2 a trustee approved by the department. The trustee shall operate the
3 most recently approved plan, subject to the direction of the
4 department, until such time as a new plan is approved. Upon plan
5 expiration or revocation of the plan, the balance of the PRO's
6 operating reserves collected shall be transferred to the control of
7 the trustee within five calendar days. All documents, digital
8 records, contracts, and files related to the operation of the plan
9 shall be transferred to the control of the trustee within five calendar
10 days.

11 (e) Include a section describing a comprehensive statewide
12 education and outreach program designed to educate consumers
13 and promote participation in the program offered by the PRO. The
14 comprehensive statewide education and outreach program shall
15 do both of the following:

16 (1) Promote the safe and proper management of a covered
17 product and shall not promote the disposal of a covered product
18 in a manner inconsistent with the services offered by the plan.

19 (2) Include information for consumers on how to avoid improper
20 disposal of a covered product.

21 47742. (a) The PRO shall review its approved plan at least
22 every five years and determine whether revisions are necessary.

23 (b) If the PRO determines that revisions to its approved plan
24 are necessary, the PRO shall submit to the department a revised
25 plan for review and approval using the procedures set forth in
26 Section 47740. The PRO shall submit the revised plan to the
27 department at least 12 months before the review deadline outlined
28 in subdivision (a). The revised plan shall include a cover letter that
29 summarizes the revisions to the plan.

30 (c) If the PRO determines that no revisions to the plan are
31 necessary, the PRO shall send a letter to the department, 12 months
32 before the review deadline outlined in subdivision (a) explaining
33 that the PRO has reviewed the plan and determined that no
34 revisions are needed. The department may disapprove the PRO's
35 determination within 30 days of receipt of the letter if the
36 department concludes that the PRO cannot implement the
37 objectives of this chapter without revising the plan. If the
38 department disapproves the PRO's determination, the department
39 may indicate to the PRO which sections of the plan need revision
40 and the PRO shall submit to the department a revised plan, or plan

1 sections, for review and approval, following the procedures set
2 forth in Section 47740. The PRO shall submit the revised plan
3 pursuant to this subdivision within 60 days of receipt of the
4 department's disapproval.

5 (d) The department may consult with or submit the revised plan
6 to another state agency or department if the department determines
7 it is necessary for making its determination. The duration of time
8 the department takes for this consultation is not included in the
9 time allotted to the department for review pursuant to this section.

10

11

Article 5. Financial Provisions

12

13 47745. The PRO shall do all of the following:

14

15 (a) Establish a method for fully funding its plan in a manner
16 that equitably distributes the plan's costs among participant
17 producers that reflects sales volumes and the cost to manage the
18 covered products that a producer produces.

18

19 (b) (1) Operate on a budget that establishes a funding level
20 sufficient to operate the PRO in a prudent and responsible manner.
21 The budget shall demonstrate how the PRO's estimated revenues
22 will cover all of the PRO's budgeted costs for each cost category.
23 Budgeted cost categories shall include, but not be limited to,
24 administrative costs, capital costs, and a reserve.

24

25 (2) Administrative costs shall include the department's actual
26 and reasonable regulatory costs, which includes full personnel
27 costs, to implement and enforce this chapter, consistent with the
28 regulations described in Section 47726. For purposes of this
29 paragraph, PRO implementation begins upon the department's
30 approval of the PRO's plan, except the department's costs shall
31 include actual regulatory development costs and other startup costs
32 incurred before plan's submittal and approval.

32

33 (3) The reserve shall include funds to operate the PRO if there
34 are unexpected events, losses of income, or large unbudgeted
35 expenses. The reserve shall also protect the infrastructure that the
36 PRO relies on in its plan during any lapse in producer participation
37 during the life of the program. The reserve cost category shall
38 include a reserve level amount description justifying the reserve
39 level amount indicated. The PRO shall maintain reserve funds
40 sufficient to operate the plan for not less than six months. When
41 a new PRO is approved by the department, the PRO shall establish

1 its reserve and maintain the required reserve fund balance by the
2 end of the second year of plan operation. If the PRO's plan expires
3 or is revoked, the reserve balance shall be transferred to a successor
4 PRO or a trustee pursuant to the portion of the plan described in
5 subdivision (d) of Section 47741.

6 (c) On a schedule determined by the department, pay the
7 department fees to cover the department's cost as described in
8 Section 47747.

9 (d) Establish a process by which the financial activities of the
10 PRO that are related to implementation of the plan will be subject
11 to an independent audit consistent with generally accepted
12 accounting principles and pursuant to Section 47752. Written
13 certification by an authorized representative of the PRO that, at
14 the time of submission to the department, all aspects of the plan
15 are in compliance with all applicable state and federal laws and
16 regulations.

17 (e) Have adequate financial responsibility and financial controls
18 in place, including fraud prevention measures, to ensure proper
19 management of funds.

20 47746. Each participant producer shall, through the PRO, pay
21 all administrative and operational costs associated with establishing
22 and implementing the PRO's approved plan, including the cost of
23 the collection, transportation, and safe and proper management of
24 covered products.

25 47747. (a) Within four months of the effective date of the
26 regulations described in Section 47726, the department shall notify
27 the PRO of the estimated regulatory costs and the criteria for the
28 costs specified in the regulations. Those costs shall include the
29 costs associated with developing the regulations and other
30 department activities that occur before plan's submittal and
31 approval, including, but not limited to, full personnel costs related
32 to implementing and enforcing this chapter. The costs shall not
33 exceed the department's reasonable regulatory costs to implement
34 and enforce this chapter.

35 (b) The department shall deposit all moneys received from the
36 PRO pursuant to this section into the Household Hazardous Waste
37 Producer Responsibility Fund, which is hereby established in the
38 State Treasury.

39 (c) Upon appropriation by the Legislature, moneys in the
40 Household Hazardous Waste Producer Responsibility Fund shall

1 be expended by the department to implement and enforce this
2 chapter and to reimburse any outstanding loans made from other
3 funds used to finance the development of the regulations and the
4 startup costs of the department’s activities pursuant to this chapter.

5 (d) The moneys in the Household Hazardous Waste Producer
6 Responsibility Fund shall only be expended for purposes described
7 in subdivision (c).

8 47748. (a) If the plan relies on a local jurisdiction to collect
9 or manage a covered product, or to otherwise comply with Section
10 47738, then the PRO shall reimburse the local jurisdiction for costs
11 associated with the collection and management of the covered
12 product.

13 (b) Reimbursement costs shall be limited to the actual costs of
14 transportation and management of a covered product.

15
16 Article 6. Records, Audits, and Reports
17

18 47750. (a) The PRO shall keep board minutes, books, and
19 records that clearly reflect the activities and transactions of the
20 PRO for a period of not less than five years.

21 (b) The department may audit the PRO annually.

22 (c) The failure of the PRO, a participant producer, or their
23 respective agent who holds records, to produce documents or data
24 that is requested by the department, required to be collected or
25 generated to carry out operation of the plan in the form and manner
26 determined by the department as part of a department audit, or
27 review of a third-party audit, shall constitute a violation of this
28 chapter.

29 47751. (a) A producer, PRO, manufacturer, distributor, retailer,
30 dealer, or importer shall do both of the following:

31 (1) Upon request, provide the department with reasonable and
32 timely access, as determined by the department, to its facilities
33 and operations, as necessary to determine compliance with this
34 chapter.

35 (2) Within 14 days of a request from the department, provide
36 the department with relevant records, as determined by the
37 department, necessary to determine compliance with this chapter.

38 (b) All reports and records provided to the department pursuant
39 to this chapter shall be provided under penalty of perjury.

1 (c) The department may impose administrative civil penalties
2 pursuant to Article 7 (commencing with Section 47755) on a
3 producer, PRO, manufacturer, distributor, retailer, dealer, or
4 importer that fails to provide the department with the access
5 required pursuant to this section.

6 47752. (a) The PRO shall retain an independent certified public
7 accountant, certified in the United States, to annually audit the
8 accounting books of the PRO. The department shall review the
9 independent certified public accountant's audit for compliance
10 with this chapter and consistency with the PRO's approved plan
11 and the annual report required by Section 47753. After the
12 department conducts its own audit, the department shall notify the
13 PRO of any conduct or practice that does not comply with this
14 chapter or of any inconsistencies identified in the audit. The PRO
15 may obtain copies of the department's audit, including proprietary
16 information contained in the department's audit, upon request. The
17 producer or PRO may withhold from disclosure confidential
18 proprietary information to the extent allowed under Section 1040
19 of the Evidence Code and the California Public Records Act
20 (Division 10 (commencing with Section 7920.000) of Title 1 of
21 the Government Code).

22 (b) The items submitted to the department as part of the
23 independent audit shall include all of the following:

24 (1) Financial statements audited in accordance with generally
25 accepted accounting principles.

26 (2) An audit of the PRO's compliance with this chapter.

27 (3) An audit of the PRO's adherence to, execution of, and
28 consistency with its approved plan.

29 (c) The PRO shall include the independent audit in its annual
30 report submitted to the department pursuant to Section 47753
31 commencing within 18 months of plan approval by the department.
32 The department shall review the audit for compliance with this
33 chapter and consistency with the PRO's approved plan.

34 47753. On or before January 1 of each year, the PRO shall
35 submit to the department, and make publicly available, an annual
36 report, in a format prescribed by the department, that includes, at
37 minimum, all of the following information for the preceding
38 calendar year, unless otherwise specified:

39 (a) The PRO's costs, according to the cost categories established
40 in the plan, and revenues.

1 (b) A summary of any anticipated changes to allocations in cost
2 categories for the next calendar year.

3 (c) Any changes to the distribution of costs to the producers
4 registered with the PRO.

5 (d) Updated contact information for participant producers.

6 (e) An estimate of the quantity of covered products sold in or
7 into the state by participant producers, as determined by the best
8 available commercial data.

9 (f) A summary of efforts made as part of the comprehensive
10 statewide education and outreach program, as required by
11 subdivision (e) of Section 47741, including the PRO’s evaluation
12 of the effectiveness of the program.

13 (g) Recommendations for any future proposed substantial
14 changes to the plan.

15 (h) Any other information required by the regulations adopted
16 pursuant to Section 47726.

17 47754. (a) No later than 120 days after the date the department
18 receives an annual report, the department shall notify the PRO if
19 the annual report is compliant or noncompliant.

20 (b) If the department determines that the annual report is
21 noncompliant due to failure to meet the requirements of this
22 chapter, the department may require the resubmittal of the annual
23 report and take enforcement action.

24 (c) The department may consult with or submit the annual report
25 to a state agency or department if it determines it is necessary to
26 determine the annual report’s compliance or noncompliance. The
27 duration of time the department takes for this consultation shall
28 not be included in the time allotted to the department for review
29 pursuant to subdivision (a).

30

31 Article 7. Enforcement

32

33 47755. A retailer, dealer, importer, or distributor shall not sell,
34 distribute, offer for sale, or import a covered product in or into the
35 state unless the producer of the covered product is listed as a
36 compliant producer pursuant to Section 47756 or received a
37 certification letter described in subdivision (e) of Section 47756.

38 47756. (a) Within 12 months of the effective date of the
39 regulations described in Section 47726, and on or before July 1 of
40 each year thereafter, the department shall publish on the

1 department's internet website, a list of the names of producers that
2 are compliant with this chapter. The department shall list, as
3 appropriate, the reported brands of covered products for each
4 producer.

5 (b) A retailer, importer, or distributor shall monitor the
6 department's internet website to determine if a producer, brand,
7 or covered product is in compliance with this chapter.

8 (c) Notwithstanding any other provision of this chapter, upon
9 identification of a producer that is not registered with the PRO
10 with an approved plan, the department shall issue a notice of
11 noncompliance to the producer.

12 (d) If the department determines a producer is not in compliance
13 with this chapter, the department shall remove the producer, and
14 its brands of covered products, from the compliance list on its
15 internet website.

16 (e) The department shall provide a certification letter to a
17 producer that is not listed on the department's internet website as
18 a compliant producer, but that has demonstrated compliance with
19 this chapter to the department. The certification letter shall state
20 that the producer of a covered product is in compliance with this
21 chapter. The department may update the compliance list on its
22 website.

23 47757. (a) The department may administratively impose on
24 any person who is in violation of this chapter a civil penalty of up
25 to the following amounts:

26 (1) Ten thousand dollars (\$10,000) per day.

27 (2) Fifty thousand dollars (\$50,000) per day if the violation is
28 intentional or knowing.

29 (b) In assessing or reviewing the amount of a civil penalty
30 imposed pursuant to subdivision (a) for a violation of this chapter,
31 the department or the court shall consider all of the following:

32 (1) The nature and extent of the violation.

33 (2) The number and severity of the violation or violations.

34 (3) The economic effect of the penalty on the violator.

35 (4) Whether the violator took good faith measures to comply
36 with this chapter and the period of time over which these
37 noncompliant actions were taken.

38 (5) The willfulness of the violator's misconduct.

39 (6) The deterrent effect that the imposition of the penalty would
40 have on both the violator and the regulated community.

1 (7) Any other factor that justice may require.

2 (c) Upon a written finding that a PRO, producer, importer,
3 distributor, or any other party regulated pursuant to this chapter
4 has not met a material requirement of this chapter, in addition to
5 any other penalties authorized pursuant to this chapter, the
6 department may take one or both of the following actions to ensure
7 compliance with the requirements of this chapter, after affording
8 the PRO, producer, importer, distributor, or any other party
9 regulated pursuant to this chapter, an opportunity to respond to or
10 rebut the finding:

11 (1) Revoke the PRO's plan approval or require the PRO to
12 resubmit the plan or plan section.

13 (2) Require additional reporting relating to compliance with the
14 material requirements of this chapter that were not met.

15 (d) The department shall deposit all penalties collected pursuant
16 to this section into the Household Hazardous Products Penalty
17 Account, which is hereby created in the Household Hazardous
18 Waste Producer Responsibility Fund. Upon appropriation by the
19 Legislature, moneys in the Household Hazardous Products Penalty
20 Account shall be available for expenditure by the department on
21 activities related to the collection, reuse, and recycling of covered
22 products, grants for related purposes, and the administration and
23 enforcement of this chapter.

24 (e) The Administrative Adjudication Bill of Rights (Article 6
25 commencing with Section 11425.10) of Chapter 4.5 of Part 1 of
26 Division 3 of Title 2 of the Government Code), applies to hearings
27 conducted pursuant to this chapter and mandates minimum due
28 process requirements.

29 47758. (a) After the time for judicial review under Section
30 11523 of the Government Code has expired, the department may
31 apply to the small claims court or superior court, depending on the
32 jurisdictional amount and any other remedy sought, in the county
33 where the penalties, restitution, or other remedy was imposed by
34 the department, for a judgment to collect any unpaid civil penalties
35 or restitution or to enforce any other remedy provided by this
36 chapter. The application, which shall include a certified copy of
37 the final agency order or decision, shall constitute a sufficient
38 showing to warrant the issuance of the judgment. The court clerk
39 shall enter the judgment immediately in conformity with the
40 application. The judgment so entered shall have the same force

1 and effect as, and shall be subject to all the provisions of law
2 relating to, a judgment in a civil action and may be enforced in the
3 same manner as any other judgment of the court. The court shall
4 make enforcement of the judgment a priority.

5 (b) If, in the judgment of the Director of Toxic Substances
6 Control, a person has engaged in or is about to engage in an act,
7 practice, or omission that constitutes, or will constitute, a violation
8 of this chapter, the Attorney General may, at the request of the
9 director, bring an action in the superior court for an order enjoining
10 the act, practice, or omission. The order may require remedial
11 measures and direct compliance with this chapter. Upon a showing
12 by the director that the person has engaged in or is about to engage
13 in that act, practice, or omission, the superior court may issue a
14 permanent or temporary injunction, restraining order, or other
15 order, as appropriate.

16 (c) An action brought by the Attorney General pursuant to this
17 section shall have precedence in respect to the order of trial over
18 all other civil actions not brought by or on behalf of the state,
19 except actions regarding probate bonds.

20 47759. A producer shall not be subject to penalties pursuant
21 to this article for noncompliance with subdivision (d) of Section
22 47730 until two years after the effective date of the regulations
23 described in Section 47726.

24

25 Article 8. Antitrust Immunity

26

27 47760. (a) Except as provided in subdivision (b), an action
28 that is taken by a producer or PRO is not a violation of the
29 Cartwright Act (Chapter 2 (commencing with Section 16700) of
30 Part 2 of Division 7 of the Business and Professions Code), the
31 Unfair Practices Act (Chapter 4 (commencing with Section 17000)
32 of Part 2 of Division 7 of the Business and Professions Code), or
33 the Unfair Competition Law (Chapter 5 (commencing with Section
34 17200) of Part 2 of Division 7 of the Business and Professions
35 Code) to the extent the producer or PRO is exercising authority
36 pursuant to this chapter.

37 (b) Subdivision (a) applies to all of the following actions taken
38 by a PRO:

39 (1) The creation, implementation, or management of a plan
40 approved or conditionally approved by the department pursuant

1 to Article 4 (commencing with Section 47740) and the
2 determination of the types or quantities of covered products
3 recycled or otherwise managed pursuant to a plan.

4 (2) The determination of the cost and structure of an approved
5 plan.

6 (3) The establishment, administration, collection, or
7 disbursement of a charge associated with funding the
8 implementation of this chapter.

9 (c) Subdivision (a) does not apply to an agreement that does
10 any of the following:

- 11 (1) Fixes a price of or for covered products.
- 12 (2) Fixes the output or production of covered products.
- 13 (3) Restricts the geographic area in which, or customers to
14 whom, covered products will be sold.

15 SEC. 3. The Legislature finds and declares that Section 2 of
16 this act, which adds Section 47740 to the Public Resources Code,
17 imposes a limitation on the public’s right of access to the meetings
18 of public bodies or the writings of public officials and agencies
19 within the meaning of Section 3 of Article I of the California
20 Constitution. Pursuant to that constitutional provision, the
21 Legislature makes the following findings to demonstrate the interest
22 protected by this limitation and the need for protecting that interest:

23 In order to ensure the effective solid waste management of, and
24 viable markets for, products that contain household hazardous
25 waste, it is necessary to protect the proprietary information of
26 producers, retailers, wholesalers, and solid waste enterprises by
27 keeping confidential the financial, production, and sales data
28 reported by those entities under Section 2 of this act.

29 SEC. 4. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

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